

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

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OASIS RESEARCH, LLC,

Plaintiffs,

v.

CARBONITE, INC., ET AL,

Defendants.

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Case No. 4:10-CV-00435-ALM  
consolidated with

Case No. 4:12-CV-00525-ALM  
Case No. 4:12-CV-00526-ALM

**RESPONSE TO CARBONITE, INC. AND OASIS RESEARCH, LLC’S  
MOTION TO ADJOURN AND SET A NEW TRIAL DATE**

Defendants EMC Corporation and Decho Corporation (collectively, “EMC”) submit this Response to Carbonite, Inc. (“Carbonite”) and Oasis Research, LLC’s (“Oasis”) Joint Motion to adjourn the Carbonite trial date and more importantly change the order of trials that has long been set by the Court. Neither Oasis nor Carbonite made any effort to meet and confer with EMC about the relief requested in their motion. For the reasons discussed below, while EMC takes no position on whether conflicts prevent Oasis and Carbonite from commencing their trial on September 14, 2015, as the Court directed, EMC respectfully objects to the attempt to change the order of the Carbonite and EMC trials.

For as long as the Court has focused on trial dates, it has scheduled Oasis to go to trial on liability and validity first against Carbonite, followed by EMC, consistent with the order of filing of the respective actions.<sup>1</sup> Oasis now seeks—apparently with Carbonite’s consent—to switch that order in a way that prejudices EMC. Neither Oasis nor Carbonite has established good

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<sup>1</sup> The case against Carbonite has a lower case number than the case against EMC. As the party with the lower number, the Carbonite liability trial has always been scheduled to occur before the EMC liability trial. *See, e.g.*, D.I. 544 (initially setting Carbonite liability trial and indicating EMC trial will be set “at a later date”), D.I. 587 (setting EMC trial after Carbonite trial). This held true just recently when the Court rescheduled the liability trials. *Compare*, D.I. 751 (September 14, 2015 Carbonite trial) with D.I. 752 (October 5, 2015 EMC trial).

cause for changing this long-standing order of trials. *See, e.g.*, Motion at 1 (simply proposing Carbonite trial “following the October 5, 2015 trial of Defendant EMC Corp.”). Accordingly, if the Court is inclined to further change the dates of any of the trials, EMC respectfully submits that the Court should retain the currently ordered sequence of trials—*Oasis v. Carbonite* followed by *Oasis v. EMC*. The parties can meet and confer on a schedule that would keep that sequence in place.

Dated: May 7, 2015

Respectfully Submitted,

/s/ Chris R. Ottenweller

Chris R. Ottenweller  
California Bar No. 73649  
cottenweller@orrick.com  
Bas de Blank  
California Bar No. 191487  
basdeblank@orrick.com  
Alyssa M. Caridis  
California Bar No. 260103  
acaridis@orrick.com  
ORRICK, HERRINGTON & SUTCLIFFE, LLP  
1000 Marsh Road  
Menlo Park, CA 94025  
Telephone: 650-614-7400  
Facsimile: 650-614-7401

Eric H. Findlay  
Texas Bar No. 00789886  
efindlay@findlaycraft.com  
FINDLAY CRAFT, P.C.  
102 N. College Ave, Suite 900  
Tyler, TX 75702  
Telephone: (903) 534-1100  
Facsimile: (903) 534-1137

*Attorneys for Defendants  
EMC Corporation and Decho Corporation*

# **CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this notice of compliance was served on all counsel who have consented to electronic service, Local Rule CV-5(a)(3)(A), on this date May 7, 2015.

/s/ Chris R. Ottenweller

Chris R. Ottenweller

<p>John M. Desmarais  Alan Kellman  Tamir Packin  John C Spaccarotella  Jonas R McDavit  Lauren Michelle Nowierski  Xiao Li  Desmarais, LLP  230 Park Avenue  New York, NY 10169  Telephone: 212-351-3400  Fax: 212-351-3401  Email: oasisadriveservice@desmaraisllp.com</p> <p>ATTORNEYS FOR PLAINTIFF OASIS RESEARCH LLC</p>	<p>James C. Tidwell  Wolfe, Tidwell &amp; McCoy, LLP  32 N. Travis, Suite 205  Sherman, TX 75090  Telephone: 903-868-1933  Fax: 903-892-2397  Email: jct@wtmlaw.net</p> <p>ATTORNEYS FOR PLAINTIFF OASIS RESEARCH LLC</p>
<p>Matthew B. Lowrie (mlowrie@foley.com)  Kevin M. Littman (klittman@foley.com)  Aaron W Moore (amoore@foley.com)  Ellen Tyan Wong (ewong@foley.com)  Matthew A. Ambros (mambros@foley.com)  Ruben Jose Rodrigues (rrodrigues@foley.com)  FOLEY &amp; LARDNER LLP  111 Huntington Ave., Suite 2600  Boston, MA 02199  Telephone: 617-342-4000  Fax: 617-342-4001</p> <p>ATTORNEYS FOR DEFENDANT CARBONITE, INC.</p>	<p>Andy Tindel  atindel@andytindel.com  PROVOST UMPHREY LAW FIRM, L.L.P.  112 East Line Street, Suite 304  Tyler, TX 75702  Telephone: 903-596-0900  Fax: 903-596-0909</p> <p>ATTORNEYS FOR DEFENDANT CARBONITE, INC.</p>